under conditions substantially similar to those admitted or proved to exist. *Collins v. People,* 194 Ill. 506. The test of admissibility is—Will it aid rather than confuse the jury? *Burg. v. Chic. R. I. & P. R. R. Co.,* 90 Ia. 106. The question of admissibility is one necessarily resting largely in the discretion of the trial judge. *State v. Smith,* 49 Conn. 376. But where experiments are relevant to the matter in issue and would tend to help the jury, exclusion is reversible error. *Farmer's & Mer. Bank v. Young,* 36 Ia. 44. Experiments must not be of an uncertain nature. *Ulrich v. People,* 39 Mich. 245. So it was inadmissible to show that two bloodhounds of the same breed as those used in tracking the supposed criminal, when put on the trail of a human being, had left it to follow the trail of a sheep. *Simpson v. State,* 11 Ala. 6.

EVIDENCE—DECLARATIONS—RES GESTAE.—BAKER V. DRAKE, 41 SOUTH, 845 (ALA.).—*Held,* that the rule, that declarations of a party in actual possession of property asserting title in himself are admissible in evidence as part of the *res gestæ,* explanatory of the possession, does not extend to his declarations as to the history and source of such title.

The above rule applies equally to real or personal property. *Ray v. Jackson,* 90 Ala. 513. But the rule has not gone so far as to allow an agent's declaration as to the ownership of property in his possession. *Standefer v. Chisholm,* 1 Stew. and P. 449 (Ala.). The present owner's declarations against his title are admissible but not for the purpose of supporting his title or that of those under him or to contradict the witnesses of the other side. *gestæ. Roebke v. Andrews,* 26 Wis. 311; *Howell v. Hyack,* 2 Abb. Dec. 423; *Turner v. Belden,* 9 Mo. 797. Since possession is presumptive evidence of title, the declarations of the possessor made during the continuance of possession, may be put in evidence to explain the character of his possession when the title is in controversy and even declarations qualifying the possession of property, at the time of its sale, are admissible as a part of the *res* likewise as to the present possessor's declaration as that he holds it in his own right or as tenant or as trustee. *Thomas v. Wheeler,* 47 Mo. 363.

FOOD—REGULATING SALE OF BUTTER—CONSTITUTIONAL LAW.—EX PARTE DIETRICH, 84 PAC. 770 (CAL.). Act requiring packages of butter offered for sale to be marked with their exact weight.—*Held,* not to be a valid exercise of the police power, but is unconstitutional as being a restriction on the right to property and privilege of following a lawful business.

The exercise of the police power must be reasonable. *Chicago v Rumpff,* 45 Ill. 90. A law which interferes with property by hampering the owner in purposes of trade and commerce is unconstitutional and void. (A law requiring certain goods to be marked "convict-made.") In this case the required mark, itself, was detrimental. *People v. Hawkins,* 157 N. Y. 1. The police power is properly exercised in regulation of manner and sale of articles, by such requirements as will tend to insure against fraud and injury. *State ex rel Atty. Gen. v. Capitol City Dairy Co.,* 62 Ohio St. 350. Statute prohibiting sale of imitation butter unless colored pink has for its object the prevention of fraud and is constitutional. *Pierce v. State,* 13 N. H. 536. Rules for the conduct of most necessary and common occupations are prescribed, when from their nature, they afford peculiar opportunities for imposition and fraud. *Cooley, Const. Lim.,* 5th ed. 743. Where act provides for marking of packages containing oleomargarine, a city cannot grant a license

to sell without so marking, apparently therefore upholding the validity of such a provision. *Haines v. People,* 7 Colo. App. 467. Legislature has the power to pass such laws as it may deem necessary to prevent deception and fraud. *People v. Arensburg,* 105 N. Y. 123.

LEGISLATION—RIGHT OF STATE TO CONTROL SPECULATION IN THEATER TICKETS.—EX PARTE QUARG, 84 PAC. 766 (CALIFORNIA).—*Held,* that a statute, prohibiting any person from selling tickets to theaters or other public places of amusement for a higher price than that originally charged by the management, is in conflict with the State Constitution which secures every person the right of "acquiring, possessing and protecting property" and therefore void. See Comment *ante.*

MANUFACTURERS—LIABILITY FOR DEFECTS IN ARTICLES MADE—WHO MAY SUE.—WATSON V. AUGUSTA BREWING COMPANY, 52 S. E. 152 (GA.).—Action to recover, from defendant, damages for injuries resulting from the swallowing of glass which the defendant had bottled up with a beverage, which he advertised as harmless and refreshing. Defendant contended that he was not liable because there was no privity of relationship between the parties, inasmuch as the beverage had not been sold directly by the defendant to the plaintiff.—*Held,* that the defendant is liable on the ground that he has violated a duty owed by him to the general public.

MASTER AND SERVANT—RAILROADS—ASSUMED RISKS.—PHIPPIN V. MISSOURI PAC. R. CO., 93 S. W. (MO.) 410.—*Held,* that where a switch-tender whose duty is to line switches so as to prevent the cornering of cars, fails to perform that duty properly, and plaintiff, whose duty is to couple such cars, is injured thereby, that plaintiff did not assume such risks, but that the negligence is that of the master.

This case shows a further limitation on the fellow-servant rule as established in *Murray v. S. C. R. Co.,* 36 A. D. (S. C.) 268 (1841) to the effect that an employer contracts with a view to all ordinary risks. This doctrine was followed in *Farwell v. Boston & Worcester Ry. Co.,* 38 A. D. (Mass.) 339, and have been adopted as the general rule. *Randall v. Baltimore & O. R. Co.,* 109 U. S. 478. With the great increase in the relationships of master and servants the hardships of the rule became apparent and statutory changes have been adopted in the various states; Colorado alone having wholly abandoned the rule. Acts of 1893, section 5. This change in Missouri was by a process of paring down the general rule, first, so as to recognize degrees of subordination among servants; *Moon v. Wabash, St. L. & P. R. Co.,* 85 Mo. 588, then reasonable care as to general conditions of employment; *Soeder v. St. Louis, I. M. & S. R. Co.,* 100 Mo. 673, and finally by statute as followed in the principal case by the exemptions as to railroads was abolished.

MASTER AND SERVANT—RAILROADS—DEFECTIVE TRACK.—ST. LOUIS, I. M. & S. RY. CO. V. MIZE, 95 S. W. 488 (ARK.).—*Held,* that a railroad company is under no obligations to its employees to repair its track provided due notice is given of such defect. Battle, J., *dissenting.*

This ruling is based on the doctrine as expressed by the maxim. *Volenti non fit injuria; O'Maley v. South Boston Gaslight Co.,* 158 Mass. 135; the interpretation of which has given rise to two schools. *Walsh v. Whildey, L.*